

Attorney Docket No.: BERN-0040
Inventors: Eric F. Bernstein
Serial No.: 09/913,697
Filing Date: January 28, 2002
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REMARKS

Claims 1-10 are pending in the instant application. Claims 1-10 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Lezdey et al. (U.S. Patent 6,096,327). Applicant respectfully traverses this rejection.

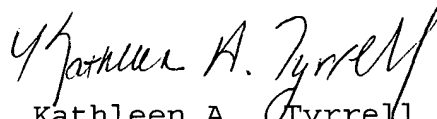
In accordance with 35 U.S.C. § 102(e) a person shall be entitled to a patent unless the invention was described in an application for patent by another filed in the United States before the invention by the applicant for patent. Applicant is providing herewith a Declaration under 37 C.F.R. § 1.131 with evidence establishing that the instant claimed invention was conceived and reduced to practice in the United States prior to the November 5, 1998 filing date of U.S. Patent 6,096,327. As made clear in Dr. Bernstein's Declaration, the invention claimed in the instant application had been conceived and various experiments performed (as evidenced by the laboratory notebook pages attached to Dr. Bernstein's Declaration) relating to use of the claimed compositions in prevention of photoaging, before November 5, 1998. Thus, U.S. Patent 6,096,327 was not filed prior to the invention by Applicants and this cannot be used as a reference under 35 U.S.C. § 102(e) against this instant application.

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Withdrawal of this rejection under 35 U.S.C. § 102(e) is therefore respectfully requested.

Applicant believes that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,



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